


## PCT

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT  
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference VV 2676/254/PCT		<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/08639	International filing date (day/month/year) 05.08.2003	Priority date (day/month/year) 08.08.2002	
International Patent Classification (IPC) or both national classification and IPC A23L1/212			
Applicant ZANICHELLI RICHERCHE S.R.L. et al.			
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p><input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of 4 sheets.</p>			
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input checked="" type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>			
Date of submission of the demand  27.01.2004		Date of completion of this report  13.12.2004	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  Georgopoulos, N  Telephone No. +49 89 2399-2634	



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EXAMINATION REPORT**

International application No. **PCT/EP 03/08639**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17):*

**Description, Pages**

1-12, 14-26 as originally filed  
13 filed with telefax on 12.11.2004

**Claims, Numbers**

16-23 as originally filed  
1-14, 15 (part) filed with telefax on 12.11.2004

**Drawings, Sheets**

1/4-4/4 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

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5. ☒ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

**see separate sheet**

6. Additional observations, if necessary:

**III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 1-11

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):

☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 1-11 are so unclear that no meaningful opinion could be formed (*specify*):

**see separate sheet**

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard:

☐ the computer readable form has not been furnished or does not comply with the Standard.

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	12-23
	No: Claims	

Inventive step (IS)	Yes: Claims	12-23
	No: Claims	

Industrial applicability (IA)	Yes: Claims	12-23
	No: Claims	

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**2. Citations and explanations**

**see separate sheet**

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**Item I**

- 1 The amendments filed with the fax dated 12.11.04 do not meet the requirements of Art.34 (2) (b) PCT. The amendments concerned are as follows:
  - 1.1 The replacement of the word "products" by the word "compositions" in present claim 4  
Originally filed claim 4 discloses "compositions comprising the tomato products of claims 1-3" (and not the "tomato compositions of claims 1-3" as in present claim 4). Moreover, the description as originally filed discloses that the invention tomato products (and, again, not the "tomato compositions of claims 1-3" as in present claim 4) have the technical features of present claim 4. Therefore, the aforementioned amendment leads to a specific disclosure, which is not contained in the originally filed application documents.
  - 1.2 The addition of the formulation "and of the compositions of claims 4-6" in present claims 7, 8 and 10 as well as the addition of the formulation "Use according to claims 7-8, wherein the compositions" in present claim 9  
For the reasoning, see paragraph 1.1 above.

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- 2 Therefore, examination will be carried out on the basis of the originally filed application documents.

**Item III**

- 3 Present claims 1-6 are so unclear (Art.6 PCT) that no meaningful examination can be carried out for their subject-matter, the reasons being as follows:
  - 3.1 Present claims 2-6 refer back to the "tomato products" of present claim 1, whereas in present claim 1 only "a tomato composition" and "tomato juice" or "tomato passatas" are disclosed. Therefore, present claims 1-6 are unclear because their scope of protection is not clearly defined.
  - 3.2 This objection applies mutatis mutandis for present claims 7-11, as said claims refer back to (some of) the present claims 1-6.

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- 4 Therefore, examination with respect to novelty, inventive step and industrial applicability will be carried out only for the subject-matter of present claims 12-23.

**Item V**

- 5 Reference is made to the following documents:

D1: EP-A-0 888 718

D2: WO-A-97 48287

D3: WO-A-03 024243

D4: US-A-5 837 311

D5: US-A-4 670 281

D6: Database WPI; AN-1993-166056; XP002268931 & SU-A-1 738 241 (abstract)

- 6 The subject-matter of present independent claim 12 is not anticipated by:
- a/ D1, as said document does not disclose an angular speed as in said claim (see page 4, lines 18-28 of D1);
  - b/ D2, as said document does not disclose an angular speed as in present claim 12 either (see examples 1 and as well as claims 1 and 3 of D2);
  - c/ D3, as said document's decanter or centrifuge operates at an angular speed which is higher than that of present claim 12 (see page 9, lines 33-35 of D3);
  - d/ D4, as said document does not disclose an angular speed as in present claim 12 either (see column 4, lines 42-64 as well as claims 1 and 3 of D4);
  - e/ D5, as said document does not disclose a solid-liquid separation apparatus working at an angular speed range of 1-20 rpm (see example and claims 1 and 3 of D5); or
  - f/ D6, as said document does not disclose a solid-liquid separation apparatus working at an angular speed range of 1-20 rpm either (see D6).
- Therefore, the subject-matter of present independent claim 12 is novel (Art.33 (2) PCT) in the light of any one of the documents D1-D6.

- 7 The subject-matter of present independent claim 12 involves an inventive step (Art.33 (3) PCT), for the following reasons:

- 7.1 In view of the technical problem to be solved by the present invention (i.e. how to provide a process for the separation of the tomato juice serum from a tomato suspension,

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- wherein it is possible to filter said suspension without having (parts of) the tomato mass stuck onto the filter; see page 7, 1st full paragraph of the present description) and its unexpected solution (i.e. operating the present invention's solid-liquid separation apparatus at an angular speed range of 1-20 rpm; see also section 5 above), the subject-matter of present independent claim 12 would not be obvious to the person skilled in the art in regard of D1-D6, taken alone or in combination.
- 8 The subject-matter of present claims 12-23 is susceptible of industrial application in the field of food industry (Art.33 (4) PCT).
- 8 The following is also pointed out:
- 8.1 The term "chees" in present claim 4 does not read "cheese" (clerical error).
- 8.2 The term "not limiting" (see page 13, line 3 of the present description) has not been deleted (see also the PCT-Guidelines, C-III, 4.3a).
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